

1 CHARLES M. TEBBUTT, WSBA #47255
Law Offices of Charles M. Tebbutt, P.C.
2 941 Lawrence St.
Eugene, OR 97401
3 Tel: 541.344.3505
charlie@tebbuttlaw.com
4

Additional Counsel Identified on Signature Page
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6 IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
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8 COMMUNITY ASSOCIATION FOR
RESTORATION OF THE
ENVIRONMENT, INC., a Washington
9 non-profit corporation

and

10 FRIENDS OF TOPPENISH CREEK, a
Washington non-profit corporation,

11 Plaintiffs,

12 v.

13 SPRING CANYON RANCH, LLC, a
Washington limited liability company,

14 Defendant.
15

Case No. _____

COMPLAINT

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
16

INTRODUCTION
17

18 1. This is a citizen suit for declaratory and injunctive relief against Defendant
19 Spring Canyon Ranch, LLC (hereinafter “SCR” or “the Dairy”) for violations of
20 the Solid Waste Disposal Act, also known as the Resource Conservation and

1 Recovery Act, 42 U.S.C. § 6901 *et seq.* (“RCRA”), at Defendant’s dairy facilities
2 located at or near 165 Isaacs Road, Outlook, WA 98938.

3 2. This civil action is brought pursuant to the citizen suit provisions of RCRA,
4 42 U.S.C. § 6972(a)(1) (A) and (B).

5 3. As detailed below, Plaintiffs allege that SCR has violated and continues to
6 violate Section 7002(a) of RCRA by contributing to the past and present handling,
7 storage, treatment, transportation, and/or disposal of solid and hazardous waste in
8 such a manner that may present an imminent and substantial endangerment to
9 health and the environment. 42 U.S.C. § 6972(a).

10 4. Plaintiffs further allege that SCR employs improper manure management
11 practices that constitute the “open dumping” of solid waste in violation of Section
12 4005(a) of RCRA, 42 U.S.C. § 6945(a).

13 5. Plaintiffs seek declaratory relief establishing that SCR has violated RCRA.
14 Plaintiffs also seek injunctive relief directing SCR to modify their handling,
15 storage, treatment, transportation, and disposal of solid and hazardous waste such
16 that these practices no longer present an imminent and substantial endangerment to
17 health and the environment. Additionally, Plaintiffs seek injunctive relief
18 obligating SCR to remediate the environmental contamination it has caused and/or
19 contributed to, including widespread soil and groundwater contamination. Finally,
20 Plaintiffs request that the Court award Plaintiffs their reasonable attorneys’ and

expert witnesses' fees, and costs, incurred in bringing this action.

JURISDICTION

6. This Court has subject matter jurisdiction over this lawsuit pursuant to Section 7002(a) of RCRA, 42 U.S.C. § 6972(a).

7. The Court also has federal question jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under RCRA and the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*

8. On February 8, 2017, Plaintiffs gave notice of the violations and their intent to file suit to the Defendant, Defendant's registered agent, United States Attorney General, United States Environmental Protection Agency (EPA), EPA Region X, Washington State Office of the Governor, Washington State Office of the Attorney General, and Washington State Department of Ecology as required by Section 7002(a) of RCRA, 42 U.S.C. § 6972(b). A copy of notice letter is attached hereto as Exhibit A and incorporated by reference.

9. On April 29, 2019, Plaintiffs gave supplemental notice of the violations and their intent to sue Defendant, Defendant's registered agent, United States Attorney General, United States Environmental Protection Agency (EPA), EPA Region X, Washington State Office of the Governor, Washington State Office of the Attorney General, and Washington State Department of Ecology as required by Section 7002(a) of RCRA, 42 U.S.C. § 6972(b). A copy of notice letter is attached hereto

1 as Exhibit B and incorporate by reference.

2 10. More than ninety days have passed since notice was served, and the
3 violations complained of in the notice are continuing at this time, or Defendant is
4 reasonably likely to continue to remain in violation of RCRA. Neither the EPA nor
5 the State of Washington has commenced or is diligently prosecuting a civil or
6 criminal action to redress the violations.

7 **VENUE**

8 11. Venue properly vests in this Court pursuant to Section 7002(a) of RCRA, 42
9 U.S.C. § 6972(a), because the alleged violations of the aforementioned statutes
10 occurred and continue to occur within the Eastern District of Washington.

11 **PARTIES**

12 12. Upon information and belief, SCR is a limited liability corporation
13 organized under the laws of the State of Washington. SCR owns and operates SCR,
14 a large dairy Concentrated Animal Feeding Operation or “CAFO.” SCR is located
15 at or near 165 Isaacs Road, Outlook, WA 98944.

16 13. SCR is a “person” within the meaning of Section 1004(15) of RCRA, 42
17 U.S.C. § 6903(15).

18 14. Plaintiff Community Association for Restoration of the Environment
19 (“CARE”) is a non-profit corporation organized under the laws of the State of
20 Washington. CARE’s principal office is located in Outlook, Washington.

1 15. CARE is a grassroots organization composed of concerned community
2 members. Its mission is to inform Washington state residents about activities that
3 endanger the health, welfare, and quality of life for current and future
4 Washingtonians through education and citizen empowerment. CARE also acts as
5 an advocate to protect and restore the economic, social, and environmental
6 resources of the region. In carrying out its mission, CARE has appeared in
7 numerous local, state, and federal proceedings.

8 16. CARE's organizational purposes are adversely affected by SCR's violations
9 of RCRA. These violations have caused significant environmental contamination
10 of the soil and groundwater. Furthermore, but for SCR's unlawful actions, CARE
11 would not have to spend as much of its resources on the environmental problems
12 created by illegal discharges from individual large-scale industrial farming
13 operations and could direct these resources to other priorities.

14 17. CARE has individual members that reside in Yakima County and in
15 proximity to the SCR. The environmental, health, aesthetic, economic, and
16 recreational interests of CARE's members have been and will continue to be
17 adversely affected by SCR's violations of RCRA. For instance:

- 18 a. Members of CARE obtain their drinking water from aquifers that have
19 been contaminated with nitrate, phosphorus, and other pollutants,
20 including bacteria, hormones and antibiotics, by SCR's improper

1 handling, storage, treatment, transportation, and disposal of solid and
2 hazardous waste. As a result, drinking water that CARE's members'
3 rely upon has been rendered unsafe for human consumption.

4 Consequently, CARE's members have been forced to obtain, or
5 should be obtaining but may not be able to afford, alternative sources
6 of drinking water. CARE's members are concerned that consuming
7 this water is harming or could harm them and their families' health.

8 b. Members of CARE also make domestic and agricultural use of
9 groundwater that has been contaminated with nitrate, phosphorus, and
10 other pollutants as a result of SCR's improper handling, storage,
11 treatment, transportation, and disposal of solid and hazardous waste.
12 As a result, water that CARE's members' rely upon has been rendered
13 unsafe for domestic and agricultural use. Consequently, CARE's
14 members have been forced to obtain, or should be obtaining but may
15 not be able to afford, alternative sources of water for these uses.
16 CARE's members are concerned that the water used in their homes is
17 harming them and their families' health. CARE's members are
18 concerned that the food they produce and rely upon for sustenance
19 using this water is not safe to consume.

20 c. Members of CARE also live, work, and recreate in the environment

1 that has been negatively impacted by SCR's improper handling,
2 storage, treatment, transportation, and disposal of solid and hazardous
3 waste. This has lessened CARE's members' enjoyment of their
4 environment. CARE's members are concerned that their environment
5 has been irreparably injured by SCR's improper practices.

6 18. Plaintiff Friends of Toppenish Creek ("FOTC") is a nonprofit corporation
7 organized under the laws of the State of Washington.

8 19. FOTC is an organization composed of concerned community members and
9 is dedicated to protecting the rights of rural communities and improving oversight
10 of industrial agriculture. FOTC works through public education, citizen
11 investigations, research, legislation, special events, and direct action. FOTC
12 particularly devotes itself to enhancing, preserving, protecting, and monitoring the
13 water quality of watersheds in the Yakima area.

14 20. FOTC's organizational goals are adversely affected by SCR's RCRA
15 violations. FOTC works tirelessly to protect the rights of communities against
16 groundwater pollution caused by industrial agriculture.

17 21. FOTC's members live in Yakima County and in close proximity to SCR.
18 FOTC's members have been and continue to be injured, and their interests
19 adversely affected, by SCR's violations. For instance:

20 a. Members of FOTC obtain their drinking water from aquifers that have

1 been contaminated with nitrate, phosphorus, and other pollutants,
2 including bacteria, hormones and antibiotics, by SCR's improper
3 handling, storage, treatment, transportation, and disposal of solid and
4 hazardous waste. As a result, drinking water that FOTC's members
5 rely upon has been rendered unsafe for human consumption.

6 Consequently, FOTC's members have been forced to obtain, or
7 should be obtaining but may not be able to afford, alternative sources
8 of drinking water. FOTC's members are concerned that consuming
9 this water is harming or could harm them and their families' health.

- 10 b. Members of FOTC also make domestic and agricultural use of
11 groundwater that has been contaminated with nitrate, phosphorus, and
12 other pollutants as a result of SCR's improper handling, storage,
13 treatment, transportation, and disposal of solid and hazardous waste.
14 As a result, water that FOTC's members rely upon has been rendered
15 unsafe for domestic and agricultural use. Consequently, FOTC's
16 members have been forced to obtain, or should be obtaining but may
17 not be able to afford, alternative sources of water for these uses.
18 FOTC's members are concerned that the water used in their homes is
19 harming them and their families' health. FOTC's members are
20 concerned that the food they produce and rely upon for sustenance

1 using this water is not safe to consume.

2 c. Members of FOTC also live, work, and recreate in the environment
3 that has been negatively impacted by SCR's improper handling,
4 storage, treatment, transportation, and disposal of solid and hazardous
5 waste. This has lessened FOTC's members' enjoyment of their
6 environment. FOTC's members are concerned that their environment
7 has been irreparably injured by SCR's improper practices.

8 22. At all relevant times, Plaintiffs were and are "persons" within the meaning
9 of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

10 **STATUTORY AND REGULATORY FRAMEWORK**

11 23. Section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B), provides that
12 citizens may commence a citizen suit against "any person," "including any past or
13 present generator, past or present transporter, or past or present owner or operator
14 of a treatment, storage, or disposal facility who has contributed or who is
15 contributing to the past or present handling, storage, treatment, transportation, or
16 disposal of any solid or hazardous waste which may present an imminent and
17 substantial endangerment to health or the environment."

18 24. Section 1002(b) of RCRA states that "disposal of solid waste... in or on the
19 land without careful planning and management can present a danger to human
20 health and the environment;" and that "open dumping is particularly harmful to

1 health, contaminates drinking water from underground and surface supplies, and
2 pollutes the air and the land....” 42 U.S.C. § 6901(b).

3 25. As required by statute, EPA has promulgated criteria under RCRA §
4 6907(a)(3) defining solid waste management practices that constitute open
5 dumping. *See* 42 U.S.C. § 6944(a); 40 C.F.R. Parts 257 and 258. These regulations
6 outline certain solid waste disposal practices, which, if violated, pose a reasonable
7 probability of adverse effects on health or the environment. 40 C.F.R. § 257.3.

8 26. The purpose of RCRA is “to promote the protection of health and the
9 environment.” RCRA seeks to accomplish this by “prohibiting future open
10 dumping on the land and requiring the conversion of existing open dumps to
11 facilities which do not pose a danger to the environment or to health....” 42 U.S.C.
12 § 6902(a)(3).

13 27. Section 4005(a) of RCRA prohibits “any solid waste management practice
14 or disposal of solid waste... which constitutes the open dumping of solid waste....”
15 42 U.S.C. § 6945(a).

16 28. Under section 1004(3), “The term ‘disposal’ means the discharge, deposit,
17 injection, dumping, spilling, leaking, or placing of any solid waste... into or on any
18 land or water so that such solid waste or hazardous waste or any constituent thereof
19 may enter the environment or be emitted into the air or discharged into any waters,
20 including ground-waters.” 42 U.S.C. § 6903(3).

1 29. RCRA defines “solid waste” as “any garbage, refuse, sludge from a waste
2 treatment plant... and other discarded material, including solid, liquid, semisolid,
3 or contained gaseous material resulting from... *agricultural operations*....” 42
4 U.S.C. § 6903(27) (emphasis added).

5 30. EPA criteria for solid waste disposal practices prohibit the contamination of
6 any underground drinking water source beyond the solid waste boundary of a
7 disposal site. 40 C.F.R. § 257.3-4(a).

8 31. An “underground drinking water source” includes (1) an aquifer supplying
9 drinking water for human consumption or (2) any aquifer in which the ground-
10 water contains less than 10,000 milligrams per liter of total dissolved solids. 40
11 C.F.R. § 257.3-4(c)(4).

12 32. “Contaminate” an underground drinking water source means to cause the
13 groundwater concentration of a listed substance to exceed its corresponding
14 maximum contaminant level specified in Appendix I to 40 C.F.R. Part 257, or
15 cause an increase in the concentration of that substance where the existing
16 concentration already exceeds the maximum contaminant level in Appendix I.

17 33. Under RCRA Section 7002(a)(1)(A) and (B), a suit may be brought against
18 “any person...who has contributed or who is contributing to the past or present
19 handling, storage, treatment, transportation, or disposal of any solid or hazardous
20 waste which may present an imminent and substantial endangerment to health or

the environment.” 42 U.S.C. § 6972(a)(1)(B).

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FACTS

34. SCR was founded by John Bosma, Jeff Bosma, and Brian Bosma and commenced operation as SCR in 2005. Prior to 2005, the facility operated as John Bosma Dairy or some other name, but was also operated as a large dairy CAFO.

35. SCR owns approximately 596 acres of land at or near 165 Isaacs Road, Outlook, WA 98938. SCR uses 381 acres for land applications of its nutrient, process, and waste water.

36. As of March 22, 2016, SCR had at least 2376 dairy cow animal units, including milking cows, dry cows, heifers and calves. These animals were confined 365 days per year.

37. SCR is considered a large dairy CAFOs under federal and state law. 40 C.F.R. § 412.2; WAC 173-224-030.

38. Upon information and belief, there are two main aquifers underlying the SCR and the surrounding area. These aquifers include a surficial unconfined to semi-confined alluvial aquifer and an extensive basalt aquifer of great thickness underlying sedimentary deposits. Groundwater flows through the surficial aquifer in a manner that generally follows surface topography. Groundwater flows through the upper portions of the underlying basalt aquifer also generally follows surface

1 topography.

2 39. Plaintiffs' members obtain groundwater for domestic consumption from one
3 or both of these aquifers.

4 ***Manure Storage Practices***

5 40. It is estimated that SCR generates approximately 18,000,000 gallons of
6 liquid waste and 45,300 tons of solid waste annually.

7 41. SCR composts the solid manure wastes generated by its herd on-site.
8 Composted manure is then used as bedding at the facility.

9 42. Solid Manure that is not composted by SCR is land-applied to agricultural
10 fields.

11 43. Solid manure is stored and/or composted at SCR on permeable surfaces.

12 44. SCR stores the liquid manure wastes generated by its herd in one of the four
13 manure storage lagoons. Wastes are held in these lagoons until such time as they
14 are applied to fields through various land-application techniques.

15 45. At least three of SCR's four lagoons are impoundments containing no
16 synthetic liner or other artificial barrier.

17 46. These lagoons have an estimated holding capacity of approximately 14.9
18 million gallons.

19 47. SCR's manure lagoons are constructed above an aquifer that serves as a
20 domestic water supply. SCR's manure storage lagoons leak to groundwater.

1 48. Upon information and belief, seepage from the manure waste storage areas
2 has been ongoing since the date these storage areas were brought into operation,
3 some more than 10 years ago, and has been continuous since put into operation.

4 49. Public records and other data indicate that the groundwater underlying SCR
5 exceeds the Federal and State Ground Water Quality Standards for nitrate (10
6 mg/L), and that wells tested in residential wells in the area have tested in excess of
7 10 mg/L.

8 50. The seepage of manure waste from the lagoons has contributed and is
9 contributing to the excessive contamination of the groundwater, which is posing, or
10 may pose, an imminent and substantial endangerment to health or the environment.

11 51. SCR's storage and/or composting of solid manure on permeable surfaces
12 causes runoff and leachate from the solid manure to enter groundwater, further
13 contributing to the contamination of the groundwater.

14 52. SCR's storage of solid and/or liquid manure in lagoons and other permeable
15 surfaces has caused and is continuing to cause the contamination of groundwater.

16 53. Manure that has been permitted to leach, leak, or otherwise discharge into
17 groundwater, such as from a leaking lagoon, solid manure storage area, compost
18 storage area, or other permeable surface, is a "discarded material" from an
19 "agricultural operation," and is therefore a "solid waste" under Section 1004(27) of
20 RCRA, 42 U.S.C. § 6903(27).

54. SCR's improper manure storage practices have caused irreparable injury to the environment, contaminating soils and groundwater with excessively high levels of nitrate and other pollutants.

Manure Application Practices

55. Upon information and belief, SCR and/or its agents have applied, continue to apply, and are reasonably likely to continue to apply liquid and solid manure wastes to nearby fields in amounts that exceed agronomic rates.

56. The surface soils to which SCR applies manure have a high saturated hydraulic conductivity.

57. Dairy effluent concentrations of ammonia and nitrate can be considerable, as ammonia is produced by hydrolysis of waste fluids. Ammonia is rapidly converted to nitrate when the manure encounters aerobic soils or groundwater. Due to their high solubility, ammonia transformed to nitrate can readily leach into groundwater.

58. Plants can uptake nitrate and nitrite only in limited quantities. Quantities of nitrate and nitrite in the soil in excess of concentrations that can be used by the currently active crop migrate into the vadose zone, the unsaturated area between the bottom of the root zone and the water table, and then into the water table where they adversely impact ground water quality and its use as a drinking water source. Migration to the vadose zone and water table may also occur where well-drained

1 soils cannot hold the nitrate and nitrite in the root zone for a sufficient amount of
2 time to allow for the crops' natural uptake process.

3 59. Elevated nutrient levels found in soils receiving manure are evidence of
4 manure applications in excess of agronomic rates.

5 60. Soil tests from SCR from 2007-2010 show elevated nitrate and phosphorous
6 levels in soils receiving manure generated at SCR. Some fields tested as high as
7 249 ppm nitrate.

8 61. Upon information and belief, the elevated nutrients found in SCR's fields
9 are evidence of applications of manure in excess of agronomic rates.

10 62. Applications of manure waste above agronomic rates cause manure
11 nutrients, including but not limited to nitrate, to leach through soil and into
12 groundwater.

13 63. Once nitrate enters the vadose zone, the area below the soil surface from the
14 end of the vegetative root zone to the beginning of a groundwater table, it migrates
15 down to the nearest groundwater.

16 64. Once nitrate enters the water table, it migrates away from the SCR and into
17 the wells of nearby residents or into nearby surface waters depending upon the
18 depth and flow direction of the initial receiving groundwater.

19 65. The contaminated shallow groundwater likely feeds surface waters such as
20 the Roza-Sunnyside Board of Joint Control Drains and the Sunnyside Canal. The

1 Joint Drains converge and discharge into the Granger Drain, which in turn then
2 discharges to the Yakima River. The Sunnyside Canal discharges into the Yakima
3 River. These waters are used by members of CARE and CFS and the general
4 public for multiple purposes, including but not limited to recreation, human
5 consumption, irrigation, and sustenance.

6 66. Upon information and belief, the over-application of liquid manure above
7 agronomic rates has been ongoing since the date SCR and its named predecessors
8 were brought into operation.

9 67. SCR knows or should know that applications of manure above agronomic
10 rates – that is, applications above that which the current or planned crop can
11 effectively utilize – will cause manure nutrients, including but not limited to nitrate
12 and phosphorus, to pass through soils before they can be utilized by the planned or
13 active crop and into groundwater. This renders the manure incapable of serving its
14 intended beneficial purpose as a fertilizer.

15 68. Manure that has been over-applied on fields and permitted to leach, leak, or
16 otherwise discharge into groundwater is a “discarded material” from an
17 “agricultural operation,” and is therefore a “solid waste” under Section 1004(27) of
18 RCRA, 42 U.S.C. § 6903(27).

69. SCR's improper manure application practices have caused irreparable injury to the environment, contaminating soils and groundwater with excessively high levels of nitrate and other pollutants.

Contamination of Groundwater in Excess of MCLs

70. The practices mentioned in preceding paragraphs are causing or contributing to groundwater contamination beyond the Maximum Contaminant Level ("MCL") for nitrate.

71. The EPA has determined that nitrate poses an acute health concern at certain levels of exposure. Nitrate contained in drinking water is colorless and odorless. Ingestion of nitrates, converted to nitrite in the body, interferes with the oxygen carrying capacity of blood, potentially resulting in cyanosis and, at higher levels, asphyxia.

72. High levels of nitrate in water can also cause a blood disorder in infants known as methemoglobinemia ("blue baby syndrome") that can be fatal if left untreated.

73. Methemoglobinemia is a blood disorder in which an abnormal amount of methemoglobin -- a form of hemoglobin -- is produced. Hemoglobin is the molecule in red blood cells that distributes oxygen to the body. Methemoglobin cannot release oxygen. In methemoglobinemia, the hemoglobin is unable to release oxygen effectively to body tissues.

1 74. High nitrate levels may also affect pregnant women and adults with
2 hereditary cytochrome b5 reductase deficiency.

3 75. In addition, nitrate and nitrite ingestion in humans has been linked to
4 goitrogenic (anti-thyroid) actions on the thyroid gland (similar to perchlorate),
5 fatigue and reduced cognitive functioning due to chronic hypoxia, and maternal
6 reproductive complications including spontaneous abortion.

7 76. Ingestion of nitrates in excess of the MCL is also suspected of causing
8 various forms of cancer in the general exposed population, including a variety of
9 carcinogenic outcomes deriving from N-nitrosamines formed via gastric nitrate
10 conversion in the presence of amines, and compromises the health of immuno-
11 compromised individuals and the elderly.

12 77. The MCLs are health-based standards that specify contaminants known to
13 have an adverse effect on human health at levels beyond the parameters set forth
14 by regulations.

15 78. The EPA has established that the MCL for nitrate in groundwater is 10
16 milligrams per liter (mg/l), or 10 parts per million (ppm).

17 79. Water samples taken from residential wells surrounding SCR show elevated
18 levels of nitrate.

80. SCR's storage and application of manure has caused nitrate contamination of these residential wells, forcing Plaintiffs' members and other residents to either consume unsafe drinking water or to obtain alternative sources of drinking water.

81. SCR's manure storage and application practices, described in the preceding paragraphs, have caused irreparable injury to the environment, contaminating groundwater with excessively high levels of nitrate and other pollutants.

CAUSES OF ACTION

Count I: RCRA Imminent and Substantial Endangerment

82. Plaintiffs incorporate by reference the allegations of the preceding paragraphs of this Complaint.

83. Since at least December of 2006, SCR, and before that its predecessors in interest, have been discarding manure which is a "solid waste" under section 1004 of RCRA, 42 U.S.C. § 6903(27), because the manure is, either when over-applied or leaked through holding areas, a discarded solid, liquid, and/or semisolid material resulting from an agricultural operation.

84. SCR is the past and present owner or operator of a storage or disposal facility. As indicated above, manure is stored and disposed of in massive earthen pits and other holding structures. As a result, Defendant contributes to the past or present handling, storage, and disposal of a solid waste. RCRA, 42 U.S.C. § 6972(a)(1)(B).

1 85. SCR is a past and present generator of manure and other by-product wastes.
2 Manure is “handled” and “transported” by the Defendant, as well as disposed of on
3 land owned or leased by the Defendant. *Id.*

4 86. Defendant’s handling, transportation, storage, and disposal of manure may
5 present an imminent and substantial endangerment to public health and/or the
6 environment.

7 87. Specifically, as alleged above, ground and surface water contamination
8 levels on the Defendant’s land, and down-gradient and downstream from
9 Defendant’s land and facilities, have contamination levels that exceed the
10 maximum safe consumption limits established under state and federal law,
11 establishing a case of imminent and substantial endangerment to public health
12 and/or the environment.

13 88. The National Primary Drinking Water Standards (“NPDWS”) are
14 established under the Safe Drinking Water Act (“SDWA”), 42 U.S.C. § 300f, *et*
15 *seq.* The NPDWS are health-based standards that specify contaminants known to
16 have an adverse effect on the health of persons at levels beyond the parameters set
17 forth in the regulations. 42 U.S.C. § 300f(1)(B).

18 89. The Washington Water Quality standards were promulgated to protect
19 groundwater and human health pursuant to the Washington Water Pollution
20 Control Act, RCW 90.48.

1 90. Promulgated pursuant to this statute, WAC 173-200-040(2)(a)
2 provides: Groundwater concentrations shall not exceed the criteria listed in Table
3 1, except as described in WAC 173-200-050 (3)(b). The ground-water protection
4 standard for nitrate is the same as the federal MCL of 10 mg/l.

5 91. 40 C.F.R. § 257.3-4(a) prohibits a facility or practice from contaminating an
6 underground drinking water source. “Contamination” occurs when a facility or
7 practice introduces a toxic substance that causes the concentration of that substance
8 in groundwater to exceed certain parameters listed in Appendix I to 40 C.F.R. §
9 257.3-4(a).

10 92. The past and continuing practices of SCR have contaminated and continue to
11 contaminate groundwater to levels that exceed the maximum limits for safety
12 established under state and federal law. These practices present an imminent and
13 substantial endangerment to the environment and/or public health. Specifically,
14 SCR is polluting groundwater to the extent that it is hazardous to health and the
15 environment and the shallow contaminated groundwater is feeding nearby surface
16 waters including, but not limited to, Roza-Sunnyside Board of Joint Control
17 Drains, the Sunnyside Canal, and the Yakima River.

18 93. Pursuant to RCRA Section 7003, SCR may be subject to an injunction under
19 RCRA ordering it to cease and abate any past or present handling, storage,
20 treatment, and/or transportation of any solid waste or hazardous waste that may

1 present an imminent and substantial endangerment to public health and/or the
2 environment.

3 94. Plaintiffs' interests are harmed and will continue to be harmed by this
4 imminent and substantial endangerment and by Defendant's failure to abate the
5 endangerment unless the Court grants the relief sought herein.

6 **Count II: RCRA Illegal Open Dumping**

7 95. Plaintiffs incorporate by reference the allegations of the preceding
8 paragraphs of this Complaint.

9 96. SCR constitutes an "open dump" under RCRA Section 1004(14). 42 U.S.C.
10 § 6903(14).

11 97. SCR's solid waste disposal practices cause groundwater concentration levels
12 of nitrate and other pollutants to exceed the limits set forth in Appendix I to 40
13 C.F.R. Part 257, which constitutes illegal open dumping, and is considered to pose
14 a reasonable probability of causing adverse effects to health and the environment.

15 98. Defendant stores and disposes of manure at the facilities. The manure
16 constitutes an agricultural waste and a "solid waste" under section 1004 of RCRA
17 because it is over applied and/or improperly stored, and therefore constitutes a
18 "discarded material" under the statute. 42 U.S.C. § 6903(27).

19 99. Groundwater monitoring data indicates that the disposal of solid wastes at
20 the SCR, including the fields SCR uses to apply manure, are causing the

1 contamination of groundwater to exceed the limits set forth in Appendix I to 40
2 C.F.R. Part 257. Concentrations of nitrate, identified herein, have repeatedly
3 exceeded the maximum contaminant levels, as documented by the EPA study. This
4 practice constitutes illegal open dumping.

5 100. Pursuant to Section 3008, 42 U.S.C. § 6928, SCR may be subject to an
6 injunction under RCRA ordering them to cease open dumping and remediate the
7 environmental contamination they have caused and/or contributed to, including
8 widespread soil and groundwater contamination. *Id.*

9 101. Plaintiffs' interests are harmed and will continue to be harmed by
10 Defendant's open dumping unless the Court grants the relief sought herein.

11 **RELIEF REQUESTED**

12 WHEREFORE, Plaintiffs CARE and FOTC respectfully request that the Court
13 enter a judgment:

14 A. Declaring that Defendant's past and/or present generation, handling, storage,
15 treatment, transportation, and/or disposal of solid waste presents, or may present,
16 an imminent and substantial endangerment to public health or to the environment.

17 B. Declaring that Defendant's storage and disposal of manure and its
18 incorporated by-products constitutes illegal open dumping.

19 C. Issuing a compliance order that requires Defendant to cease and desist from
20 storing manure on any portion of Defendant's land that the Defendant has not first

1 lined adequately with synthetic liners to prevent seepage of pollutants into surface
2 water or groundwater that may, whether by flow or diffusion, transmit such
3 pollutants outside Defendant's property boundaries.

4 D. Issuing a compliance order that requires Defendant to capture, adequately
5 treat, and sequester as necessary all surface water or groundwater on or within its
6 land, except surface water that flows as the direct result of snowmelt or a
7 precipitation event, so that discharges of such water do not cause or contribute to
8 violation of any applicable water quality standards in any water resource that
9 receives such discharge.

10 E. Issuing temporary and/or permanent injunctive relief against Defendant,
11 ordering Defendant to cease all activities constituting the imminent and substantial
12 endangerment to the public health and environment, and to cease all activities
13 constituting illegal open dumping.

14 F. Issuing temporary and/or permanent injunctive relief against Defendant,
15 ordering Defendant to design and implement a program which evaluates the actual
16 amount of manure necessary to provide a specific crop with its anticipated nutrient
17 needs, and to have sufficient land available, as documented in an approved
18 Nutrient Management Plan, to handle the amount of manure produced by
19 Defendant.

1 G. Issuing temporary and/or permanent injunctive relief against Defendant,
2 ordering Defendant to design and implement a regular soil sampling protocol, such
3 protocol to require sampling at one-foot intervals down to at least a four-foot
4 depth, in order to prevent the ongoing migration of nitrate (and other pollutants) to
5 the vadose zone and groundwater. Such soil sampling protocol must include soil
6 moisture concentrations to be able to convert the soil nitrate data to concentration
7 in the soil solution.

8 H. Issuing temporary and/or permanent injunctive relief against Defendant,
9 ordering Defendant to design and implement a groundwater monitoring program
10 designed to detect the transport of dairy manure nutrients into groundwater.

11 I. Issuing temporary and/or permanent injunctive relief against Defendant,
12 ordering Defendant to supply clean, safe drinking water to residents located within
13 at least three (3) miles of SCR who rely upon well water for consumption.

14 J. Ordering Defendant to take all such actions as may be necessary to eliminate
15 any present and future endangerment and open dumping practices.

16 K. Ordering Defendant to pay Plaintiffs' reasonable attorneys' fees, expert
17 witnesses' fees, and costs incurred in prosecuting this action pursuant to 42 U.S.C.
18 § 6972(e) and 28 U.S.C. § 2412(d); and

19 L. Ordering such other relief as the Court may deem just and proper, including
20 pursuant to 42 U.S.C. § 6972(a)(1).

1 Dated: November 7, 2019

2 Respectfully Submitted,

3 s/ Charles M. Tebbutt

4 CHARLES M. TEBBUTT

Washington Bar No. 47255

5 Law Offices of Charles M. Tebbutt, P.C.

941 Lawrence St.

6 Eugene, OR 97401

Tel. 541.344.3505

7 charlie@tebbuttlaw.com

8 s/ Toby J. Marshall

TOBY J. MARSHALL

9 WSBA #32736

Terrell Marshall Law Group PLLC

10 936 North 34th Street, Suite 300

Seattle, Washington 98103-8869

11 tmarshall@terrellmarshall.com

12 s/ Andrea K. Rodgers

ANDREA K. RODGERS

13 WSBA #38683

Law Offices of Andrea K. Rodgers

14 3026 NW Esplanade

Seattle, WA 98117

15 andrearodgers42@gmail.com

Counsel for Plaintiffs